

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Manitou Village Chalet Townhomes,

Plaintiff,

v.

Civil No. 12-386 (JNE/FLN)
ORDER

Harleysville Insurance Company,

Defendant.

This case is before the Court on a Report and Recommendation issued by the Honorable Franklin L. Noel, United States Magistrate Judge, on March 29, 2013. The magistrate judge recommended that Plaintiff's Motion for Summary Judgment be granted in part and denied in part. The magistrate judge recommending granting the motion to the extent it sought to have the Court affirm the replacement cash value portion of the appraisal award. The magistrate judge recommended denying as moot the portion of the motion seeking affirmation of the actual cash value portion of the appraisal award, and recommended denying Plaintiff's motion to the extent it sought to have the Court order Defendant Harleysville Insurance Company to pay prejudgment interest on the appraisal award total. Plaintiff filed objections and Defendant responded. The Court has conducted a de novo review of the record. *See* D. Minn. LR 72.2(b). Based on that review, the Court adopts the Report and Recommendation [Docket No. 57].¹ Therefore, IT IS ORDERED THAT:

1. Plaintiff's Motion for Summary Judgment [Docket No. 38] is GRANTED in part and DENIED in part.

¹ Along with its Response to Plaintiff's Objections, Harleysville also submitted an affidavit with attached exhibits. As far as the Court can discern, these materials were not previously part of the record. Manitou objected to this submission, asserting non-compliance with Local Rule 72.2(b) and (d). Manitou's objection is well-founded and Court did not consider Harleysville's additional submissions when deciding whether to adopt the Report and Recommendation.

2. Plaintiff's motion is GRANTED to the extent it seeks to have the Court affirm the replacement cash value portion of the appraisal award. Harleysville shall pay the remaining \$287,795.64 in accordance with the terms of the contract.
3. To the extent Plaintiff seeks to have the Court affirm the actual cash value portion of the appraisal award, the motion is DENIED as moot.
4. Plaintiff's motion is DENIED to the extent it seeks an order compelling Harleysville to pay prejudgment interest on the appraisal award total.

Dated: May 6, 2013

s/Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge